

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:PSI:B01

PLR-143908-07

Date:

March 03, 2008

Legend:

Trust =

A =

B =

C =

Date 1 =

Date 2 =

Date 3 =

Trustee =

X =

Court =

Dear

This letter responds to a letter dated September 27, 2007, and subsequent correspondence, submitted on behalf of Trust by Trust's authorized representative, requesting rulings under section 664 of the Internal Revenue Code on the qualification of Trust as a charitable remainder unitrust (CRUT).

The information submitted states that on Date 1, A and B created Trust with the intention that Trust qualify as a fixed percentage CRUT under section 664(d)(2). A and B created Trust with the assistance of an attorney. However, due to a drafting error, Trust was drafted inadvertently as a net income makeup charitable remainder trust (NIMCRUT) rather than as a CRUT. Since the inception of Trust, the trustees of Trust have administered Trust as a fixed percentage CRUT.

Trust provides that the unitrust amount payable to the income beneficiaries is the lesser of (1) Trust income during the taxable year, as defined in section 643(b), and, (2) x% of the net fair market value of the assets of Trust valued as of the first day of each taxable year of Trust.

On Date 2, in order to correct the scrivener's error, and because Trust is irrevocable, Trustee, the trustee of Trust, sought an order from Court authorizing an amendment ab initio of Trust. No parties objected to the proposed reformation. On Date 3, Court issued an order reforming Trust to a fixed percentage CRUT, ab initio, subject to the Service issuing a Private Letter Ruling that the reformation of Trust will not disqualify Trust as a charitable remainder trust.

Section 664(d)(2) provides that for purposes of section 664, a charitable remainder unitrust is a trust (A) from which a fixed percent (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life of or lives of such individual or individuals, (B) from which no amount other than the payments described in section 664(d)(2)(A) and other than qualified gratuitous transfers described in section 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in section 170(c), (C) following the termination of the payments described in section 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use.

Section 664(d)(3) provides that notwithstanding the provisions of sections 664(d)(2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year (A) the amount of the trust income, if such amount is less than the amount required to be distributed under section 664(d)(2)(A), and (B) any amount of the trust income which is in excess of the amount required to be distributed

under section 664(d)(2)(A), to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Section 1.664-3(a)(4) of the Income Tax Regulations provides that the trust may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in section 170(c).

Based solely on the information submitted and representations made, we conclude that the judicial reformation of Trust, ab initio, does not violate section 664. Furthermore, assuming that the terms of the reformed Trust are otherwise valid under section 664, the reformed Trust will be treated as a valid CRUT under section 664(d)(2), ab initio.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the above described facts under any other provision of the Code. Specifically, no opinion is expressed concerning whether Trust is or was a charitable remainder trust within the meaning of section 664.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

/s/

Audrey W. Ellis
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: